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ABSTRACT

Treaties have been upheld in the U.S. Constitution as "the supreme law of the land". U.S. courts have repeatedly recognized Indian nations as sovereign and, consequently, treaties between Indian nations and the United States have the dignity as well as the full force and effect of any other international agreement. While many treaties over the past 200 years have reflected the declining power of the Indian, the treaties with the Pacific Northwest Indians were treaties of friendship and peace. They were not signed in defeat but instead reflected the Indians' willingness to accommodate to the needs of the newcomers. Tribes of this region gave up title to nine-tenths of the present State of Washington; in return they reserved certain lands for themselves, most of which were sites at river mouths where salmon return to spawn. The U.S. generally agreed to provide medical care and other services and to protect the tribes from outside governments and hostile whites. These treaties have not lost their potency with age. This document treats areas of specific concern to the Pacific Northwest Indians. It gives a history of the kinds of treaties and their legal basis, justifies the preservation of reservations, and discusses land use practices associated with logging, dams and pollution, fish resources, the Boldt decision, fishing rights, water rights, and self determination. (DS)

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About the Coalition

The National Coalition to Support Indian Treaties is composed of local and national non-Indian organizations and individuals who have voiced support for the keeping of claims and treaties signed by the United States and Native Americans. The purpose of the organization is educating people to understand Native American struggles for self-determination and the moral, legal and political responsibility bequeathed to the non-native citizenry by the treaties. The coalition is guided in its efforts by its Indian Oversight Board.

The Speaker's Bureau — includes attorneys, scientists, clergy, and Native Americans who address civic organizations, public forums, church groups, schools, and the media

Internal Education — researched information, workshops, and teach-ins for members

Clipping Service — this service (the monitoring of media and government publications) is designed to keep member organizations and individuals informed on treaty issues

Membership

Oversight board: Mel Tonasket, chairman of the Colville Tribe and president of the National Congress of American Indians; **Joe delaCruz**, president of the Quinault Tribe and past president of the National Tribal Chairmen's Association; **Bernie Whitebear**, Colville Tribe, Executive Director of the United Indians of All Tribes Foundation; **Ramona Bennett**, Chairman of the Puyallup Tribe; **Jacqueline Delahunt**, Rosebud Lakota Tribe, Evergreen State College instructor; **Bob Matz**, Sisseton-Wahpeton Sioux Tribe

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Exactly what is a treaty?

A treaty is an agreement, binding and legal, between two or more sovereign nations. When nations make treaties with each other, they also recognize that each is sovereign; that is, that each has legitimate political power of its own.

When the first European explorers arrived in North America, there were at least a million Indians here, organized into more than 600 groups. Many of these groups belonged to highly structured governments within an intricate, far-reaching trading economy.

The U.S. called the agreements it signed with Indian tribes "treaties" because it recognized that tribes were sovereign nations.

Was the U.S. the only country to sign treaties with Indians?

No. England, France and Spain dealt with Indian governments as equals, too. They signed treaties to regulate and formalize relationships with the tribes. Later, the U.S. signed more than 800 treaties with Indian governments.

What other kinds of treaties have we signed with Indians in this country?

In the early treaties (1778-1810), the new United States was weak economically and militarily. The country sought Indian assurances of peace. Often these treaties asked that Indians join in military alliances against the British, French and Spanish. Indians negotiated these treaties from a position of strength since they could choose to ally themselves with the U.S. or with the Europeans.

From 1817 to 1840 the U.S. signed many "treaties of removal." The primary goal was to remove Indians from land desired by whites. These treaties reflect the declining power of the Indians as the Europeans, potential allies against the U.S., withdrew their claims from North America. The emigration of the Cherokees (known as the "Trail of Tears") and other Indians from the Southeast and from the Great Lakes to lands west of the Mississippi in Arkansas, Kansas and Oklahoma occurred under these treaties.

What legal status do these agreements have?

The U.S. Constitution upholds treaties as "the supreme law of the land" in Article VI, Section 2. U.S. courts have repeatedly recognized Indian nations as sovereign, and consequently treaties between Indian nations and the U.S. have the dignity as well as the full force and effect of any other international agreement.

Finally came the "reservation treaties" (1846-1864) or "treaties of peace and friendship." Warfare had become increasingly unacceptable to many citizens, horrified by reports of troops massacring Indian women and children. War also cost too much. In 1870, officials estimated that Indian wars had cost the federal government more than $1 million for each dead Indian.

As the southwest, the Pacific coast, and the northwestern territories were claimed by the U.S., it became impossible to force the Indians to move any further west. The new treaties again involved great land cessions from the Indians while they reserved tracts of land for their own exclusive use and occupancy. In return for land and for altering their livelihoods, Indians received promises of money, goods, and certain services, such as health care and education. The U.S. government is still providing these treaty-promised services in some cases today.

What's so special about treaties with the Pacific Northwest Indians?

Agreements with Pacific Northwest Indians were treaties of peace and friendship. They were not signed in defeat, but instead reflect the Indians' willingness to accomodate themselves as much as possible to the needs of the newcomers. The most urgent need from the United States' view was to keep the neighboring British and Russians from encroaching. The U.S. was eager to have its own citizens settle and establish legal claim to the land. The government declared Washington as a territory in 1853 and during the next three years Governor I.I. Stevens signed a series of treaties (five west and two east of the Cascade Mountains) with the Indian people which would free up title to the land for white settlement.

Just what did the U.S. have to promise to Pacific Northwest Indians?

The tribes of this region gave up title to nine-tenths of the present State of Washington. In return, they reserved certain lands for themselves. Most of these lands included sites at the river mouths where the salmon, the basis of the native economy, returned to spawn. The Indians also reserved the right to hunt and fish in common with white newcomers to the territory in all their usual places. The U.S. generally agreed to provide medical care and other services and to protect the tribes from outside governments and hostile whites.

Is there any legal basis for preserving the treaties?

Treaties are international agreements. They do not lose potency with age. The U.S. Constitution, older than many Indian treaties, is still in effect

today. The Constitution also holds that treaties are the law of the land until or unless they are properly changed. The federal courts have protected the validity of Indian treaties repeatedly. Also, the U.S. still enjoys the property and other rights gained as the result of treaties with Indian people.

Some Pacific Northwest Indians remember their own grandfathers' accounts of witnessing the treaty signings, and therefore they do not feel that treaties are ancient or outdated documents.

Don't reservations keep Indians from becoming assimilated and self-supporting citizens?

A great many Indians don't want to become assimilated. They believe they have the right to remain Indians, just as non-Indians have the right to choose their own lifestyle. This choice does not condemn them to a life of poverty, however. Strong tribal governments can provide economic opportunity for their people.

Since strengthening political and legal control of their reservation, beginning in 1966, the Quinault Tribe on the Olympic Peninsula has tightened supervision of logging, fishing and land-use management. The reservation has almost doubled its population by attracting members back to their homeland where they can see the development of an economy to support them. Unemployment has declined from 56 per cent to 31 per cent in that period; the school drop-out rate has decreased from 50 per cent to eight per cent; and the number of college students has risen from just one to 80 as the young see a chance for themselves. This is but one tribe's experiences. There are many others.

Strong tribal governments can also provide social and health care that cost the state a lot of money. Indian reservations bring money into the state, too. Of every four dollars spent on an Indian reservation, three end up in the pockets of non-Indians neighbors who sell goods and services.

Wouldn't non-Indians make better use of the land than Indians, who let so many acres lie idle?

When George Weyerhauser, the lumber magnate, died in 1917 he owned 1/426th of the United States and his corporation still owns that much today. Acres of this land is forest, still untouched. Yet there are fewer people living on and using Weyerhauser land than in the areas surrounding it. Should the rest of us revoke the property laws that permit Weyerhauser to control all that territory?

If we want to begin changing property relationships in this country, let's not begin with those least powerful--the Indian tribes. The reason Indians wanted to reserve part of their territory as a permament home was precisely because they had and still have very different ideas from non-Indians about what good use of land is.

Haven't non-Indians used the land Indians gave them wisely?

Non-Indians have, for the most part, a poor record in setting land-use standards and sticking to them. Pacific Northwest tribes maintained salmon as an abundant resource for 4,000 years before non-Indians came on the scene. In the early 1900's, over 16 million fish were caught in Puget Sound waters, and that number had declined to only 3.5 million by the mid-1960's, according to the State Department of Fisheries.

Indians had nothing to do with this decline. The causes include urban and industrial pollution, particularly the manufacture of pulp, paper and wood products. Between 1952 and 1962, polluted waters caused 63 major fish kills in Puget Sound, many involving thousands of salmon, steelhead and other gamefish. The U.S. Fish and Wildlife Service was unable to coax a single reform from any polluter in any of the incidents.

Poor logging practices like the clear-cutting of timber near streams allows excessive silt to enter the streams during run-off, just when the salmon are returning to spawn, which they won't do in muddy waters. The construction of the Grand Coulee Dam wiped out 1100 miles of spawning grounds. One spill of a dam on the Snake River in 1976 killed 1.2 million fingerling salmon, yet the total Indian treaty catch for that year was 1.1 million fish.

Tribal governments can and do regulate land-use practices. The Northern Cheyenne Tribe, for example, fought many years to achieve a Class A air-quality rating from the Environmental Protection Agency in order to regulate strip-mining and coal company pollution on its reservation.

Hasn't the fish resource been decimated since the Boldt decision?

Sure, the fish population has declined since U.S. v. Washington was filed in September, 1970. The number of treaty Indians remains the same, however, and the Indian catch has increased only nine per cent since 1973.

But we should also look at the increase in the number of white fishermen. According to U.S. Representative Lloyd Meeds, licenses to non-Indian commercial fishermen increased by 51 per cent between 1972 and 1976, and between 1970 and 1974 the number of gill net licenses increased by 91 per cent.

This is despite the fact that Judge Boldt ruled that the State, in allowing non-Indians to fish, cannot act to diminish the Indians' right to take fish.

Have the methods of fishing changed at all in the last hundred years?

Yes, quite a lot. Before immigrants arrived in the neighborhood, Indians traditionally fished at the mouths of all the rivers. It was the most ecological and economically-sound method of fishing, since one could be sure

the proper number of salmon returned to their spawning grounds to guarantee a healthy run of fish the following year. After counting the number of fish needed to return up the river, fishermen simply lowered their nets and caught everything else.

After white people arrived, however, things began to change. Not at first, of course, because the fishing spots were already being occupied by Indians and because there was not strong economic incentive. After the canning industry developed, however, it became more profitable and non-Indians entered the market.

Instead of competing for fish at the mouths of rivers, however, non-Indians went out into the Sound with boats and caught fish at random. More and more boats were put on the water over the years, and the fish population was severely depleted.

The state of Washington began regulating the trap fishermen at the rivers, instead of regulating the marine fishery, and that is how we ended up with the present situation. The federal government stepped into the case by bringing the U.S. v. Washington suit in 1970.

Why should non-Indians have to keep agreements that give so few Indians 50 per cent of the area's fish?

First of all, treaty rights are property rights and cannot be taken without mutual agreement and compensation. In addition to reserving certain homelands, the treaty tribes in Washington State reserved the right to fish "in common" with the new citizens of the territory in their usual and accustomed places, both on and off the reservation. The Indians have retained that right in the treaty they signed as co-equal governments with the United States government. The Ninth Circuit Court of Appeals affirmed Judge Boldt's decision on June 4, 1975. It held that any attempt to divide the rights to the fish, which the co-equal signers of the treaties were to hold in common, "must reflect this initial equality."

Second, Judge Boldt did not <u>give</u> the Indians 50 per cent of the fish: rather, he recognized that the treaty already guaranteed the chance to take up to half the fish that would normally reach the off-reservation, usual Indian fishing places. "Normally" means that the fish to be shared include fish that would reach the Indians' usual fishing grounds if they hadn't been caught previously by non-Indian fishermen. In 1976, the Indian treaty fishermen actually took only 14 per cent of the 50 per cent to which they were entitled.

Third, while there are four times as many non-Indian as there are Indian fishermen, there <u>are</u> 1400 Indian fishermen. Surely 1400 is more than a "few." And there are 14,000 formally-enrolled treaty Indians in Puget Sound and the Coastal Treaty area, all of whom are entitled to fish under the U.S. v. Washington decision. The Indian fishery is a viable, growing economy which will undoubtedly support greater numbers of Indians in the future now that the law protects their rights.

Fishing has, for countless generations, been central to the Puget Sound Indians' economies. When the Puget Sound tribes gave up, peacefully, almost all of the land in Western Washington, they insisted on treaty provisions protecting their fish economy. Non-Indians came to the land granted to them by the Indians in order to farm, log and trade. Puget Sound Indians allowed this immigration, for those purposes, but only under the promise that they be allowed to continue with their fish economy. Native Americans do not own Boeing, Weyerhaueser, Seattle First National Bank, Gulf, or U&I Sugar. Many Indians have no desire to participate in those kinds of businesses. What Puget Sound natives do insist upon is what their treaties guarantee--the right to a fishing economy.

One of the problems facing both Indian and non-Indian full-time commerical fishermen is the number of part-time fishermen who do not acutally rely on fishing for their livelihood.

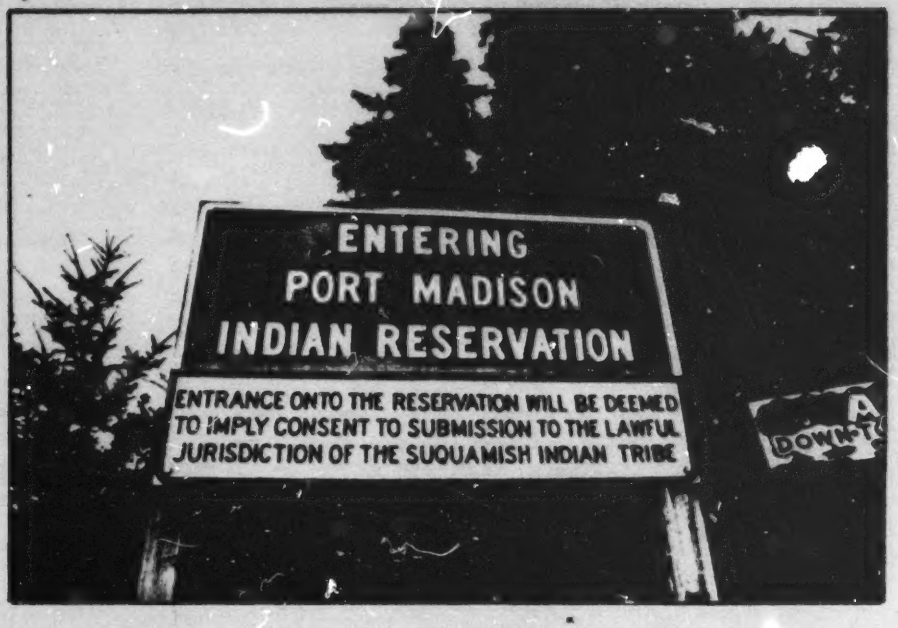
When Indian nations reserved land in treaties with the United States, did they also reserve rights to water?

Yes, Indian treaties reserve for the Natives ownership rights to both land and water. The treaties reserved for the Natives all of the water necessary to fully utilize the land within their respective reservations. The United States Supreme Court, from the beginning of the Twentieth Century, has repeatedly upheld this Indian right to water.

Water rights in the arid Western states are allocated under complex regulations. These regulations boil down to giving first priority to the first user of water in a particular stream, add second priority to the second user, and so on. Native Americans, who have been using this water since time immemorial, are the first users of water. United States law, therefore, guarantees to Natives a quantity of water sufficient for the pruposes of the land reservation. The technical "priority date" of Indian water rights, with respect to water allocation, is the date of the signing of the treaty.

What are the rights of non-Indians who live on reservations?

Indian governments traditionally have been, and continue today, to be respectful of the rights of non-tribal members. There is no history of abuse of the rights of non-Indians on reservations. In fact, the reverse is true. Wealthy ranchers, land developers, and strip miners seek to terminate Indian jurisdiction in order to acquire Indian land and resources at bargain prices and therefore extract super-profits.


ENTERING
PORT MADISON
INDIAN RESERVATION
ENTRANCE ONTO THE RESERVATION WILL BE DEEMED
TO IMPLY CONSENT TO SUBMISSION TO THE LAWFUL
JURISDICTION OF THE SUQUAMISH INDIAN TRIBE

Those who seek to live in peace with the natives have always received fair, even generous, treatment from Indian governments. Federal law protects the civil rights of all persons on Indian land, including the due process, free speech, and private property rights of non-Indians. Almost all Indian constitutions contain provisions patterned after the United States Bill of Rights.

Indian Nations do desire self-determination, and that includes the responsibility to make and enforce laws within their territory. Ordinary home-owners will continue to receive the respect and justice they always have gotten from Indian governments. It is mostly those who seek super-profits at Native expense who fight the Indians' right to make laws on Indian land.

Indians have been called 'supercitizens' in Washington. Are they?

Well, only if supercitizenship entitles them to the lowest rate of education of all other U.S. citizens, the highest infant mortality rate, and the lowest life expectancy rate. Until these inequities are corrected, Indians can hardly be called "supercitizens."

Indians did not ask to be U.S. citizens. But they now have the rights and responsibilities of U.S. citizenship. They also have the extra rights

and responsibilities of tribal citizenship. They have many disabilities not suffered by non-Indians, such as the control of their property by the Bureau of Indian Affairs. Also, they have the right to govern themselves and see treaty promises fulfilled. Most federal benefits received represent payment for land or were agreed upon at the time of treaty-signing.

So what can I do?

The National Coalition to Support Indian Treaties represents the voices of organized non-Indians who are insisting that our government keep the promises it made over the last 200 years to Indian peoples and nations.

There's plenty to do: hold an informal "coffee hour" in your home. Invite friends, neighbors, members of your own organization or church group. NCSIT will provide the speakers and materials. Do canvassing (doorbelling) of a legislative district, write letters, set up outreach tables, do fundraising activities, work with the media. And there's always office work.

The address is below. All you have to do is pick up the phone and begin.

This pamphlet was produced in the interest of public education by the National Coalition to Support Indian Treaties. The headquarters of the coalition is located at 814 Northeast 40th Street, Seattle, Washington 98105, phone 206-632-6496.

Organizational and individual memberships in the coaltion are available on request by contacting the Seattle coordinating office. Bulk quantities of this pamphlet are also available from the Seattle office.

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"Great nations, like great men, keep their word."

— Justice Hugo Black commenting on Indian treaties.

If the rights of Native Americans are not respected, the honor of the United States, and its avowed principles of freedom, due process, and self-determination will suffer severely in the eyes of the world community. Only in Indian America are the functions of the schools, police, hospitals, public works, social services, real estate and even private businesses controlled by the federal government and civil service employees. Our leaders speak to no avail when they espouse human rights on foreign soils while here at home the rights of Native Americans continue to be threatened and ignored.

Drawing by Pat Lucas